

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

GLOBAL PLASMA SOLUTIONS, INC.,
Plaintiff,

v.
D ZINE PARTNERS, LLC and
MARWA ZAATARI
Defendants.

CIVIL ACTION NO. 3:21-cv-00884-D
JURY TRIAL DEMANDED

**DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO
DEFENDANT'S SECOND MOTION TO DISMISS PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE 12(b)(6)**

Defendants D Zine Partners, LLC (“D Zine”) and Marwa Zaatari (“Zaatari”) (collectively, “Defendants”) by and through their undersigned attorneys, file this the Defendants’ Reply to Plaintiff’s Response to Defendant’s Second Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(6) as to Plaintiff Global Plasma Solutions, Inc.’s (“GPS”), First Amended Complaint, and state as follows:

I. SUMMARY OF ARGUMENT

Plaintiff, Global Plasma Solutions, Inc., (“GPS”), is a Defendant in a class action case in Delaware: *Garner v. Global Plasma Solutions, Inc.*, Cause Number 21-665-CFC, in the United States District Court for the District of Delaware. There it has filed its own 12(b)(6), a copy of the GPS’ 12(b)(6) Initial Brief for informational purposes is attached hereto as Exhibit 1. From Exhibit 1 there seems to be three legal points on which the parties agree:

1. Plaintiff GPS cites to numerous sources in GPS' Complaint, including GPS's website. Thus, Defendants can rely on these sources, including anything on a website, in Defendants' motion to dismiss. *See Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993).¹
2. If there are competing studies, citing to one or the other is not deceptive.²
3. A court is permitted to find, as a matter of law, that no reasonable consumer could be misled by the challenged advertising." *Pernod Ricard USA LLC v. Bacardi U.S.A., Inc.*, 702 F. Supp. 2d 238, 251 n.19 (D. Del. 2010).³

Plaintiff GPS ignores the fact that the law is clear that the publication must contain a false statement of fact to be actionable (under defamation, but without deception Plaintiff has no case under any of its causes of action). *See e.g., Neely v. Wilson*, 418 S.W.3d 52, 62 (Tex 2014) ("[S]tatements that are not verifiable as false cannot form the basis of a defamation claim."). Thus, a statement that cannot be proved either true or false cannot form the basis of a defamation claim. *See, e.g., Harvest House Publ'rs v. Local Church*, 190 S.W.3d 204, 211-12 (Tex. App.—Houston [1st Dist.] 2006, *pet. denied*). In the present case GPS has attached cites to verifiable studies that disagree with the GPS position. Because of this admitted ongoing scientific debate, there can be no deception. Without deception, GPS' house of cards tumbles: there is no Lanham Act advertising violation, no defamation, no

¹ GPS' Brief Exhibit 1 footnote 2.

² See GPS' Brief Exhibit 1 at pages 6-7.

³ GPS' Brief Exhibit 1 at page 5.

business disparagement, no tortious interference with prospective business, and no common law unfair competition violation.

II. ARGUMENT

A. GPS CITES COMPETING STUDIES IN GPS' FIRST AMENDED COMPLAINT

GPS' First Amended Complaint cites multiple articles and studies that disagree with GPS scientific sales position. These include:

1. "How to prevent "Snake Oil" Sales from the IAQ Industry" Webinar on April 15 at 1:00 pm ET with Professor Glenn Morrison, PhD (University of North Carolina at Chapel Hill, Gillings School of Public Health), Mr. Bud Offerman, MSME, PE, CIH (IAQ researcher, sick building investigator, mitigation planner, healthy building design consultant, expert witness), and Mr. Thomas Licker, CEICR, CBRM (division manager of Infection control technologies).
<https://vimeo.com/537459733>
<https://healthyindoors.com/2021/04/how-to-prevent-snake-oil-sales-in-the-iaq-industry/>
2. "Evaluating a commercially available in-duct bipolar ionization device for pollutant removal and potential byproduct formation."
Yicheng Zeng^a Prashik Manwatkar^a Aurélie Laguerre^b Marina Bekea Insung Kang^a Akram S.Ali^a Delphine K.Farmer^c Elliott T.Gall^b Mohammad Heidarinejad^a Brent Stephens^a. Building and Environment. Volume 195, 15 May 2021, 107750.

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<https://www.sciencedirect.com/science/article/pii/S036013232100158X#!>

3. "Open Letter to Address the Use of Electronic Air Cleaning Equipment in Buildings" (the "Open Letter"), April 12, 2021
<https://medium.com/open-letter-to-address-the-use-of-electronic-air/no-to-ionizers-plasma-uvpco-bc1570b2fb9b> **Dr. Linsey Marr**, Professor | Department of Civil and Environmental Engineering | University of Virginia Tech. **Dr. Jose Luis Jimenez**, Professor of Chemistry & Biochemistry | University of Colorado, **Dr. William Bahnfleth**, Professor | Department of Architectural Engineering | Penn State, Professional engineer, **Dr. Shelly Miller**, Professor | Department of Mechanical Engineering | University of Colorado Boulder, **Dr. Jeff Siegel**, Professor | Department of Civil and Mineral Engineering | University of Toronto, **Mr. Hoy Bohanon**, Professional mechanical engineer | Owner Hoy Bohanon Engineering, **Dr. Elliott Gall**, Assistant professor | Thermal & Fluid Science Group | Portland State University, **Dr. Kim Prather**, Professor | Climate, Atmospheric Science & Physical Oceanography | University of California San Diego, **Dr. Delphine Farmer**, Associate Professor | Department of Chemistry | Colorado State University, **Dr. Brent Stephens**, Professor | Department of Architectural Engineering | Illinois Institute of Technology, **Dr. Richard Corsi** Professor | Maseeh College of Engineering and Computer Science | Portland State University, **Dr. Wayne Thomann**, Assistant Professor | Family Medicine and Community Health | Duke University, **Dr. Marwa Zaatari** | Partner | DZINE Partners | **Dr. Marcel Harmon** | Associate Principal and Research & Development Lead | BranchPattern
4. Federal officials seek better rules about schools' indoor air quality "Significant questions remain regarding effectiveness and the potential impacts on human health," air quality experts wrote about the equipment schools are buying. May 14, 2021, 5:00 AM CDT By Heidi Przybyla.
<https://www.nbcnews.com/business/business-news/federal-officials-seek-better-rules-about-schools-indoor-air-quality-n1267313>
5. "Kansas Suggested Schools Use Chemical Foggers To Fight COVID. Here's Why They Shouldn't KCUR | By Celia Llopis-Jepsen". Published April 30, 2021 at 2:00 AM CDT <https://www.kcur.org/news/2021-04-29/kansas-suggested-schools-use-chemical-foggers-to-fight-covid-but-heres-why-they-shouldnt>
6. Schools spending millions on air purifiers often sold using overblown claims. **By Lauren Weber and Christina Jewett, Kaiser Health News**

Updated 6:06 PM ET, Tue May 11, 2021

<https://www.cnn.com/2021/05/03/health/air-filter-covid-scams-khn/index.html>

7. Trane Technologies. A Taxonomy of Air-Cleaning Technologies Featuring Bipolar Ionization, [https://www.jp.trane.com/content/dam/Trane/Commercial/global/about-us/wellsphere/Technology Whitepaper - Bipolar Ionization.pdf](https://www.jp.trane.com/content/dam/Trane/Commercial/global/about-us/wellsphere/Technology%20Whitepaper%20-%20Bipolar%20Ionization.pdf) (2021, accessed 31 March 2021).
8. Sleiman M, Fisk WJ. Evaluation of Pollutant Emissions from Portable Air Cleaners. Final Report: Contract No. 10-320. Berkeley, CA, <https://ww2.arb.ca.gov/sites/default/files/classic/research/apr/past/10-320.pdf> (2014, accessed 5 April 2021).
9. Crawford T, Fritz P, Wainman T. Changes in IAQ Caused By Corona Discharge Air Cleaner. ASHRAE J 2018; 64–67.
Full report citation: BTSA Report on IAQ Testing of AtmosAir May 10, 2013. Report of Bureau of Toxic Substance Assessment Testing the AtmosAir Bi-Polar Ionization Product at the Glens Falls High School, Glens Falls, NY on February 18-22, 2013.
10. Gressel MG, Wilder LC. Evaluation of mitigation strategies for reducing formaldehyde concentrations in unoccupied Federal Emergency Management Agency-owned travel trailers. Atlanta, GA, <https://stacks.cdc.gov/view/cdc/26758> (2009).
11. U.S. Environmental Protection Agency (EPA). Residential Air Cleaners: A Technical Summary, 3rd Edition, Portable Air Cleaners, Furnace and HVAC Filters, www.epa.gov/iaq (2018, accessed 6 April 2021).
12. Liu W, Huang J, Lin Y, et al. Negative ions offset cardiorespiratory benefits of PM_{2.5} reduction from residential use of negative ion air purifiers. Indoor Air 2021; 31: 220–228.
13. Dong W, Liu S, Chu M, et al. Different cardiorespiratory effects of indoor air pollution intervention with ionization air purifier: Findings from a randomized, double-blind crossover study among school children in Beijing. Environ Pollut 2019; 254: 113054.

14. EMG (Environmental and Modelling Group). EMG: Potential application of air cleaning devices and personal decontamination to manage transmission of COVID-19, 4 November 2020, <https://www.gov.uk/government/publications/emg-potential-application-of-air-cleaning-devices-and-personal-decontamination-to-manage-transmission-of-covid-19-4-november-2020> (2020, accessed 9 March 2021).
15. U.S. Environmental Protection Agency (EPA). Indoor Air Pollution: An Introduction for Health Professionals | Indoor Air Quality (IAQ) | US EPA, <https://www.epa.gov/indoor-air-quality-iaq/indoor-air-pollution-introduction-health-professionals> (accessed 31 March 2021).
16. U.S. Environmental Protection Agency (EPA). Air Quality Criteria For Ozone and Related Photochemical Oxidants (Final Report, 2006). Washington, DC
<https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=149923> (2006, accessed 31 March 2021).
17. Phaniendra A, Jestadi DB, Periyasamy L. Free Radicals: Properties, Sources, Targets, and Their Implication in Various Diseases. *Indian J Clin Biochem* 2015; 30: 11–26.
18. Vallyathan V, Shi X. The role of oxygen free radicals in occupational and environmental lung diseases. *Environ Health Perspect* 1997; 105: 165–177.
19. Corsi RL. Assessment of Maximum Ozone Emissions in Residential, Office and School Buildings. Austin, TX, <https://corsiairquality.files.wordpress.com/2021/03/assessment-of-maximum-ozone-emissions-in-residential-office-and-school-buildings-.pdf> (2006, accessed 5 April 2021).
20. Wells JR, Schoemaeker C, Carslaw N, et al. Reactive indoor air chemistry and health—A workshop summary. In: *International Journal of Hygiene and Environmental Health*. Elsevier GmbH, 2017, pp. 1222–1229.

21. Price DJ, Day DA, Pagonis D, et al. Budgets of Organic Carbon Composition and Oxidation in Indoor Air. *Environ Sci Technol*. Epub ahead of print 2019. DOI: 10.1021/acs.est.9b04689.
22. Isaacman-VanWertz G, Massoli P, O'Brien R, et al. Chemical evolution of atmospheric organic carbon over multiple generations of oxidation. *Nat Chem* 2018; 10: 462–468.
23. Peng Z, Jimenez JL. Radical chemistry in oxidation flow reactors for atmospheric chemistry research. *Chem Soc Rev* 2020; 49: 2570–2616.
24. Daniels SL. Applications of Air Ionization for Control of VOCs and PM X, Paper #918, www.globalplasmasolutions.com (2019, accessed 31 March 2021).
25. Jiang S-Y, Ma A, Ramachandran S. Negative Air Ions and Their Effects on Human Health and Air Quality Improvement. *International Journal of Molecular Sciences*; 19. Epub ahead of print 2018. DOI: 10.3390/ijms19102966.
26. CDC via ASHRAE. CDC Position on Bipolar Ionization, <https://www.ashrae.org/technical-resources/filtration-disinfection#cdcposition> (2020, accessed 31 March 2021).
27. Environmental and Modelling Group (EMG) Potential Application of Air Cleaning Devices and Personal Decontamination to Manage Transmission of COVID-19 (2020) Scientific Advisory Group for Emergencies (SAGE). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939173/S0867_EMG_Potential_application_of_air_cleaning_devices_and_personal_decontamination_to_manage_transmission_of_COVID-19.pdf
28. Y. Zhang, J. Mo, Y. Li, J. Sundell, P. Wargocki, J. Zhang, J.C. Little, R. Corsi, Q. Deng, M.H.K. Leung, L. Fang, W. Chen, J. Li, Y. Sun. “Can commonly-used fan-driven air cleaning technologies improve indoor air quality? A literature review” *Atmos. Environ.*, 45 (2011), pp. 4329-4343, 10.1016/j.atmosenv.2011.05.041

- 29.K.-H. Kim, J.E. Szulejko, P. Kumar, E.E. Kwon, A.A. Adelodun, P.A.K. Reddy. “Air ionization as a control technology for off-gas emissions of volatile organic compounds”
Environ. Pollut., 225 (2017), pp. 729-743, 10.1016/j.envpol.2017.03.026
- 30.M. Kulmala, T. Petäjä, M. Ehn, J. Thornton, M. Sipilä, D.R. Worsnop, V.-M. Kerminen. “Chemistry of atmospheric nucleation: on the recent advances on precursor characterization and atmospheric cluster composition in connection with atmospheric new particle formation”
Annu. Rev. Phys. Chem., 65 (2014), pp. 21-37, 10.1146/annurev-physchem-040412-110014.

Plaintiff’s First Amended Complaint thus proves that there is an ongoing scientific debate and thus there can be no defamatory statement on the subject. This lawsuit is, simply put, GPS attempting to squelch the other side of the debate. In any debate over science, one side inherently contends the other’s position is false. And the scientific community needs to have this type of debate to advance our knowledge and understanding of the world around us. If one scientist can sue another over a disagreement, these scientific debates won’t happen.

B. NO FALSE ADVERTISEMENT

A court is permitted to find, as a matter of law, that no reasonable consumer could be misled by the challenged advertising.” *Pernod Ricard USA LLC v. Bacardi U.S.A., Inc.*, 702 F. Supp. 2d 238, 251 n.19 (D. Del. 2010). When doing so, “a court must analyze the message conveyed in full context.” *Castrol Inc. v. Pennzoil Co.*, 987 F.2d 939, 943 (3d Cir. 1993). To avoid dismissal, the complaint must contain specific, plausible allegations as to the alleged misrepresentations’ falsity. *Frederico*

v. Home Depot, 507 F.3d 188, 200-01 (3d Cir. 2007). For all the reasons shown in the Second Rule 12(b)(6) Motion, GPS’ First Amended Complaint should be dismissed.

Plaintiff GPS alleges in the Response to the Second 12b(6) at page 7 that, “In addition, Zaatari’s tweets comparing test results for a GPS product to HEPA air filters—products sold by D Zine and enVerid.” The response also states at page 4 “That Defendants are in competition with GPS is further demonstrated by Zaatari’s tweets in which she compares test results for a GPS product to HEPA air filters—the very products offered by D Zine and enVerid.”⁴ GPS further in Exhibit E of the First Amended Complaint, Plaintiff referenced one of the defendant tweets regarding education of what HEPA (high efficiency particulate air filters) portable air cleaners to choose. The defendant Dr. Marwa Zaatari did review many air cleaner products available on the market, including 51 HEPA air cleaners, none of which is sold by enVerid. As stated below in footnote 4, D ZINE does not sell HEPA products.

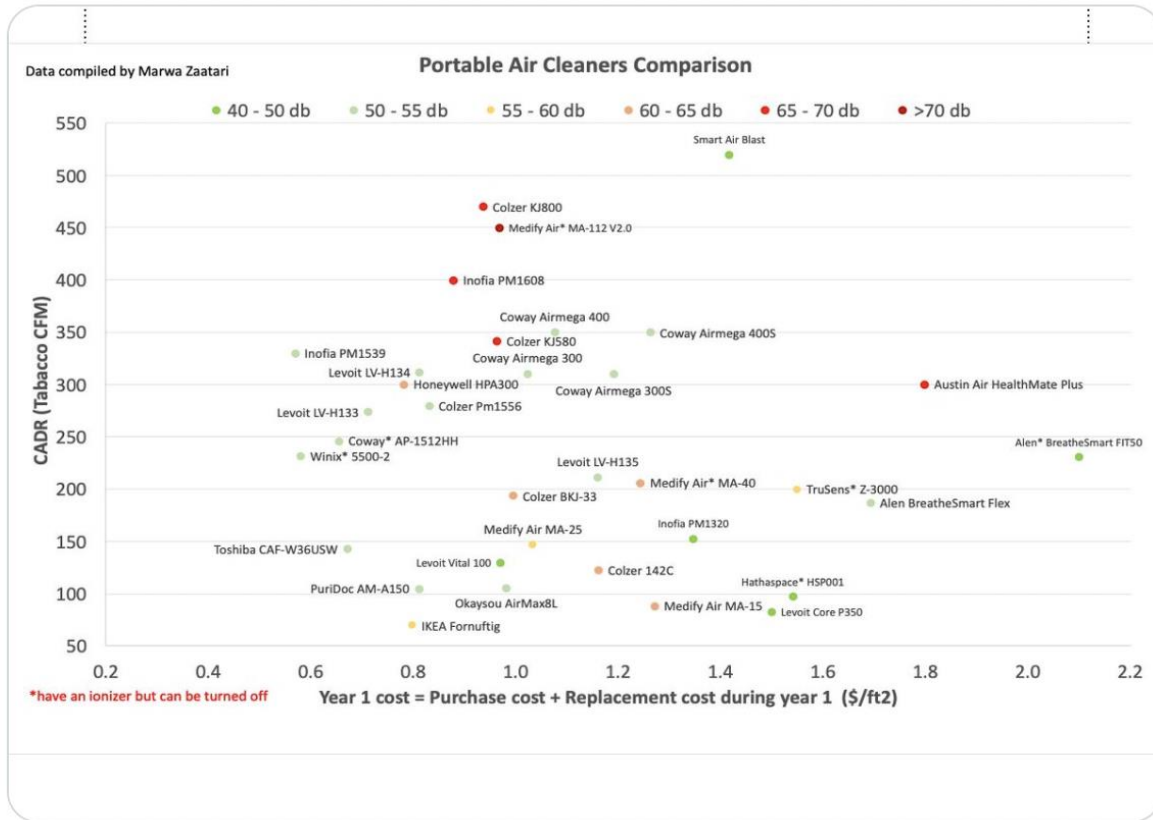
⁴ GPS offers no pleading proof to such global, conclusory statements for neither enVerid nor D Zine sell HEPA air filters. In fact, D Zine has sold no air filters nor other product to date.



Marwa Zaatari
@marwa_zaatari

Replying to @marwa_zaatari

In contrast, many in-room HEPA air cleaners available on the market are effective and cheap.



Plaintiff alleges in the Response to the Second 12(b)(6) at page 16 that, “GPS alleges that as a result of Defendants’ false statements, the Newark Unified School District ceased using hundreds of GPS’s NPBITM devices valued at over \$350,000.” The Plaintiff alleged in the First Amended Complaint at page 23 that, “One such example was reported by The Mercury News on May 20, 2021. As detailed in the article, the Newark, New Jersey Unified School District decided to cease using 556

GPS NPBITM devices—valued at over \$350,000—as a direct result of the false and misleading statements published by Zaatari”.

The Plaintiff falsely stated the school is in “Newark New Jersey.” However, as stated in the article, the school is actually in California (correct name: Newark Unified School District. School district office in Newark, California). The Plaintiff uses similar names to falsely attribute problems to the Defendant Dr. Marwa Zaatari. In addition, the article, referencing Newark, California, specifically says, that the School District decided to stop using the devices because of the class action lawsuit, and not specifically or solely because of the Defendant.

Further the Plaintiff states “In addition, in reply to Zaatari’s March 9, 2021, Twitter thread devoted to GPS’s NPBI™ technology, Erin Downes VMD stated: ‘Thanks again for helping me be comfortable with my decision not to install NPBI technology in my veterinary hospital!!’ (Dkt. No. 21-7.) Construed in the light most favorable to GPS, as it must be, Downes’ statement further supports that GPS incurred special damages as a result of Defendants’ disparaging statements. GPS’s allegations are sufficient to plead special damages.” The Plaintiff fails to mention that Erin Downes replied to four people in the conversation (see picture below).



The assumption and conclusionary statement by GPS is further debunked by the fact that an e-mail correspondence between defendant and Erin Downes on Nov 10, 2020 does show that Erin Downes decided on not using GPS product long before she spoke with the defendant. Her correspondence to the Defendant was about another technology called G-UV.

Plaintiff argues that defendant's statements are understood as referring to GPS, while their own exhibits are evidence that contradict it. It shows the Defendant appealing to and educating her readers to stop using unproven technologies not limited to needle point bipolar ionization as evidenced below:

Exhibit M: "stop the fogging, etc..."

Exhibit E: "Be aware of false marketing, HEPA-like etc..."

"Stay away of fancy technology marketing: Plasma wave, Fragrance Sponge, UV Light Sanitizer Eliminates, NCCO technology, Active

oxygen generator, ionic purifier + composite catalyst, cold catalyst layer, negative ion generator, Bi-polar, PECO, PCO, Plasma, Cold Plasma”

Exhibit I: “No to Ozone generation, No to Bipolar ionization, No to PC oxidation, No to Radicals formation, No to Magic disinfection, Chemical vaporization...”

Exhibit K: “The widely used removal mechanisms occur by electrically charging particles using corona wires, pins or needles, with plasma (positive and/or negative ions formed by charging major components of air as well as pollutant molecules), or by photocatalytic oxidation. The design of the system may create one or more reactive oxygen species (ROS), ozone, hydroxyl radicals, superoxide anions, gaseous hydrogen peroxide, and others.”

The Defendant’s tweets are meant to educate the readers on unproven technologies. Plaintiff is pigeonholing the Defendant’s scientific outreach and portraying as personal attack on GPS. This is obviously untrue as evidenced by many of the Plaintiff’s own exhibits and claims.

III. CONCLUSION

As under the law Plaintiff has failed to prove, even at the pleading stage, a false statement but merely a scientific debate, which scientific debate Plaintiff is

attempting to crush,⁵ Plaintiff GPS has failed to state a Lanham advertising violation, defamation, business disparagement, no tortious interference with prospective business, no common law unfair competition. The case should be dismissed.

IV. PRAYER

Defendants pray that this Court grant Defendants' Second Motion to Dismiss pursuant to Rule 12(b)(6), and dismiss Plaintiff's claims asserted against Defendants, and for any and all other relief to which they have shown themselves justly entitled.

Respectfully Submitted,

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⁵ For further example, Plaintiff has issued 15 Rule 45 subpoenas, mostly to researchers who supported the Open Letter, even before the agreed Federal Disclosure date.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record in accordance with the applicable Federal Rules of Civil Procedure on this 28th day of June 2021.

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